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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,375	06/20/2006	Jans Roosjen	VER-204XX	2169

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WEINGARTEN, SCHURGIN, GAGNEBIN & LEOVICI LLP
TEN POST OFFICE SQUARE
BOSTON, MA 02109

EXAMINER

CHAWLA, JYOTI

ART UNIT	PAPER NUMBER
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1781

MAIL DATE	DELIVERY MODE
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08/17/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/565,375	Applicant(s) ROOSJEN, JANS	
	Examiner JYOTI CHAWLA	Art Unit 1781	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 July 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: none.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-75.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Keith D. Hendricks/
 Supervisory Patent Examiner, Art Unit 1781

Jyoti Chawla
 Examiner
 Art Unit: 1781

Continuation of 3. NOTE: After final amendment dated 07/27/2010 proposes amendments to claims 1, 6, 27, 30, 54-55 and 68 and claim 7 has been cancelled that were examined in the final office action dated 3/16/2010. The new limitations recited in independent claims 1 include "the grain being ground to a flour with a particle size...pore size of at most 150 microns", where the pore size of flour was part of dependent claims 7. Further independent claim 1, has an added limitations of "and "at least about 85% of the flour" was not previously recited" in line 6 of claim 1, which was not part of the previously examined claims. The new limitations of amended independent claim 1, change the scope of the invention as claimed in claim 1 and all the claims dependent on claim 1 thereby raising new issues that would require further consideration and/or search.

Similarly dependent claim 6, has been amended to recite the "falling number of the flour is stable for at least 2-3 weeks" from "falling number of the grain at the moment of grinding being stable for at least 2-3 weeks", which changes the scope of the claimed invention.

Claim 30 has also been amended in a manner similar to claim 6.

Claim 68 also has been amended to add the limitation of minimum size of the flour, which was not examined as such in the office action of 3/16/2010.

Thus, proposed amendments, change the scope of the invention and raise new issues that would require further consideration and/or search..

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's comments filed 7/27/2010, pages 14-25 have been considered but address the claims as amended, which have not been entered. Thus, the arguments are moot and the rejections are maintained for reasons of record.

The declaration of Johannes Turkensteen of 7/27/2010, has been considered but has not been found persuasive because the declaration discusses the baking property of the teff flour (see for example page 4 of declaration and page 5 lines 1-7), where the declaration clearly states that "Prior to the invention of the present application it was unknown to utilize teff flour to produce high quality baked goods".

However, the independent claim as examined in the final office action of 3/16/2010, was directed to Teff flour, where "a falling number of the grain at a moment of grinding being at least 250" and the claim does not talk about baked goods or baking property as addressed in the Declaration. Therefore, the superior baking quality of teff flour as discussed in the declaration of 7/27/2010 is not commensurate in scope with the invention as claimed. Further, since the new amendments have not been entered, applicant's arguments are moot and the rejections are maintained for reasons of record.